IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

CRL.A.No. 135 of 2001()

CC.7/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI
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APPELLANT: COMPLAINANT

V.T.ABRAHAM, VALLIYIL HOUSE,
KAKKUDUMON, PAZHAVANGADI, RANNY.

BY ADV. SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENTS: ACCUSED & STATE
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1. **DR.MURALIDHARAN PILLAI,**
THAMARASSERIL VAIDYASALA,
PATHANADU, KANGAZHA.

2. **THE STATE OF KERALA, REP.BY THE**
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.LATHEESH SEBASTIAN
SRI.ANOOP MATHEW ABRAHAM
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K.R. UDAYABHANU, J.

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CRL.A.NO.135 OF 2001

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DATED THIS THE 17th October 2007

JUDGMENT

The appellant is the complainant in C.C.No.7/1998, the proceedings initiated under Section 138 of the Negotiable Instruments Act with respect to the dishonour of cheque for Rs.40,000/- for want of funds in the account of the accused . Lawyer notice sent was received by the accused, but no reply was sent. The trial court acquitted the accused on the ground that the complainant could not establish that the accused is having an account in the particular Bank to which the impugned cheque was issued.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 and 2 and Exts.P1 to P12. PW1 is the complainant who has testified as to the transaction involved and as to the issuance of the cheque, i.e. Ext.P1 and dishonour of the same. He has also proved the documents produced and the

documents summoned from the Bank to establish that the accused is having account in the particular Bank. Ext.P10 is the cheque returned register. Copy of the cheque returned Register summoned from the Bank would show that the impugned cheque is having the serial number of the cheque book that has been issued to the accused. The complainant has also produced Ext.P12 copy of the promissory note which was also summoned from the Bank which was allegedly executed by the accused in order to start the cash credit account to which the impugned cheque has been issued. It can be seen from the documents summoned from the Bank, i.e. Ext.P10 that account No. is C/C. 3. The same account number is mentioned in the impugned cheque as well. PW2, the Inspector of Post Offices was examined to prove that the lawyer notice was received by the accused. I find that the findings of the court below are totally erroneous and liable to be set aside; and I do so.

The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a

compensation of Rs.45,000/-(Rupees forty five thousand only) to the complainant and in default to undergo simple imprisonment for three months. The appellant is granted three months time from today onwards to pay the amount of compensation. He shall appear before the Judicial First Class Magistrate, Ranny on 17-1-2008. The appeal is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks. **TRUE COPY**

P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.A. NO. 135 OF 2001

JUDGMENT

17-10-2007